

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0439

Sales Tax

Calendar Years 1997, 1998, & 1999

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1997, 1998, and 1999.

The taxpayer sells and services computer storage devices. The taxpayer ships equipment into Indiana. The taxpayer also leases equipment to Indiana customers and maintains a small amount of inventory at the customer's location. On October 9, 1997, the taxpayer filed for Chapter 11 Bankruptcy protection. The taxpayer continues to operate.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty assessment be waived since the taxpayer has always filed on a timely basis and the penalty is a hardship for a small company.

The Department points out the error in the audit is approximately 25% of the total sales tax for the audit period. The Department considers 25% to be a material error.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer’s penalty protest is denied.

FINDING

The taxpayer’s penalty protest is denied.

TB/RAW/JMS--031004